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1 A bill to be entitled  
2 An act relating to transparency in technology;  
3 creating s. 501.2041, F.S.; creating a cause of action  
4 against a social media platform for unlawful  
5 practices; providing requirements for social media  
6 platforms; creating s. 287.137, F.S.; providing  
7 requirements for public contracts and economic  
8 incentives related to entities who have committed  
9 antitrust violations; creating s. 106.072, F.S.;  
10 providing a violation for social media platforms who  
11 deplatform certain political candidates; amending s.  
12 501.212, F.S.; conforming a provision; providing a  
13 severability clause; providing an effective date.

14  
15 Be It Enacted by the Legislature of the State of Florida:

16  
17 Section 1. Section 501.2041, Florida Statutes, is created  
18 to read:

19 501.2041 Unlawful acts and practices by social media  
20 platforms.—

21 (1) As used in this section, the term:

22 (a) "Algorithm" means a mathematical set of rules that  
23 specify how a group of data behaves that will assist in ranking  
24 search results and maintaining order or that is used in sorting  
25 or ranking content or material based on relevancy or other

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26 factors instead of using published time or chronological order  
27 of such content or material.

28 (b) "Censor" includes any action taken by a social media  
29 platform to delete, regulate, restrict, edit, alter, inhibit the  
30 publication or republication of, suspend a right to post,  
31 remove, or post an addendum to any content or material posted by  
32 a user. This term also includes actions to inhibit the ability  
33 of a user to be viewable by or to interact with another user of  
34 the social media platform.

35 (c) "Department" means the Department of Legal Affairs.

36 (d) "Deplatform" means the action or practice by a social  
37 media platform to permanently delete or ban a user or to  
38 temporarily delete or ban a user for more than 60 days.

39 (e) "Journalistic enterprise" means any entity:

40 1. Publishing in excess of 100,000 words available online  
41 with at least 50,000 paid subscribers or 100,000 monthly active  
42 users; or

43 2. Publishing 100 hours of audio or video available online  
44 with at least 100 million yearly viewers; or

45 3. Operating a cable channel providing in excess of 40  
46 hours of content per week to more than 100,000 cable television  
47 subscribers; or

48 4. Operating under a broadcast license issued by the FCC.

49 (f) "Post-prioritization" means action by a social media  
50 platform to place, feature, or prioritize certain content or

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51 material ahead of others in a newsfeed, feed, view, or search  
52 results. This term does not include post-prioritization of  
53 content and material based on payments by a third party,  
54 including other users, to the social media platform.

55 (g) "Shadow ban" means action by a social media platform,  
56 through any means whether the action is determined by a natural  
57 person or an algorithm, to limit or eliminate the exposure of a  
58 user or content or material posted by a user to other users of  
59 the social media platform. This term includes acts of shadow  
60 banning by a social media platform that are not readily apparent  
61 to a user.

62 (h) "Social media platform" means any information service,  
63 system, internet search engine, or access software provider that  
64 does business in the State of Florida, and provides or enables  
65 computer access by multiple users to a computer server,  
66 including an internet platform and/or a social media site, which  
67 is a sole proprietorship, partnership, limited liability  
68 company, corporation, association, or other legal entity that is  
69 organized or operated for the profit or financial benefit of its  
70 shareholders or other owners, and that satisfies one or more of  
71 the following thresholds:

72 1. Has annual gross revenues in excess of \$100 million, as  
73 adjusted in January of every odd-numbered year to reflect any  
74 increase in the Consumer Price Index.

75 2. Has at least 100 million monthly users globally.

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76 (i) "User" means a person who has an account on a social  
77 media platform, regardless of whether the person posts or has  
78 posted content or material to the social media platform.

79 (2) The department may bring an action under part II of  
80 chapter 501, otherwise known as the Florida Deceptive and Unfair  
81 Trade Practices Act, against a social media platform if the  
82 social media platform fails to comply with the requirements set  
83 forth in this subsection.

84 (a) A social media platform must publish the standards,  
85 including detailed definitions, it uses or has used for  
86 determining how to censor, deplatform, and shadow ban.

87 (b) A social media platform must apply censorship,  
88 deplatforming, and shadow banning standards in a consistent  
89 manner among its users on the platform.

90 (c) A social media platform must inform a user about any  
91 changes to user rules, terms, and agreements prior to  
92 implementing such changes.

93 (d) A social media platform may not censor a user's  
94 content or material or deplatform a user from the social media  
95 platform:

96 1. Without providing notification to the user who posted  
97 or attempted to post the content or material; or

98 2. In a way that violates part II of chapter 501, F.S.

99 (e) A social media platform must:

100 1. Allow a user and provide a mechanism to request the

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101 number of other users who were actually provided or shown such  
102 user's content or posts upon such user's request; and

103 2. Provide such user with the number of other users who  
104 were actually provided or shown such content or posts upon  
105 request.

106 (f) A social media platform must:

107 1. Categorize algorithms used for post-prioritization and  
108 shadow banning; and

109 2. Allow a user to opt-out of post-prioritization and  
110 shadow banning algorithm categories to allow sequential or  
111 chronological posts and content.

112 (g) A social media platform must provide users with an  
113 annual notice on the use of algorithms used for post-  
114 prioritization and shadow banning and reoffer annually the opt-  
115 out opportunity in subparagraph (2) (f)2.

116 (h) A social media company must not apply or use post-  
117 prioritization or shadow banning algorithms for content and  
118 material posted by or about a user who is known by the social  
119 media platform to be a candidate as defined in s. 106.011(3)(e),  
120 from the date of qualification through the date of the election  
121 or the date such candidate for office ceases to be a candidate  
122 before the date of election. Post-prioritization of certain  
123 content or material from or about a candidate for office based  
124 on payments to the social media platform by such candidate for  
125 office or a third party is not a violation of this paragraph.

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126 Social media platforms must provide users with a method to  
127 identify themselves as qualified candidates, and may confirm  
128 such qualification by reviewing the Florida Department of State,  
129 Division of Elections website.

130 (i) A social media platform must allow a user who has been  
131 deplatformed to access or retrieve all of the user's  
132 information, content, material, and data for at least 60 days  
133 after being deplatformed.

134 (j) A social media platform may not knowingly take any  
135 action to censor, deplatform, or shadow ban a journalistic  
136 enterprise based on the content of its publication or broadcast.  
137 Post-prioritization of certain journalistic enterprise content  
138 based on payments to the social media platform by such  
139 journalistic enterprise is not a violation of this paragraph.  
140 Social media platforms must provide journalistic enterprises  
141 with a method to identify themselves as such.

142 (3) For purposes of subparagraph (2)(d)1., a notification  
143 must:

144 (a) Be in writing;

145 (b) Be delivered via electronic mail or direct electronic  
146 notification to the user within 30 days of the censoring action;

147 (c) Include a thorough rationale explaining why the social  
148 media platform censored the user; and

149 (d) Include a precise and thorough explanation of how the  
150 social media platform became aware of the censored content or

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151 material, including a thorough explanation of the algorithms  
152 used, if any, to identify or flag the user's content or material  
153 as objectionable.

154 (4) Notwithstanding any other provisions of this section,  
155 a social media platform is not required to notify a user if the  
156 censored content or material is obscene as defined in s.  
157 847.001.

158 (5) A user may only bring a private cause of action for  
159 violations of paragraph (2)(b) or subparagraph (2)(d)1. In a  
160 private cause of action brought under paragraph (2)(b) or  
161 subparagraph (2)(d)1., the court may award all of the following  
162 damages to the user:

163 (a) Up to \$100,000 in statutory damages per proven claim.

164 (b) Actual damages.

165 (c) If aggravating factors are present, punitive damages.

166 (d) Other forms of equitable relief.

167 (e) If the user was deplatformed in violation of paragraph  
168 (2)(b), costs and reasonable attorney fees.

169 (6) In an investigation by the department into acts of  
170 shadow banning by a social media platform, the department has  
171 the power to subpoena the social media platform for any  
172 algorithm related to shadow banning and any related  
173 documentation used within the previous 24 months related to  
174 shadow banning.

175 (7) This section may only be enforced to the extent not

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176 inconsistent with federal law, to the extent authorized under 47  
177 U.S.C. s. 230(e)(3), and notwithstanding any other provision of  
178 state or local law.

179 Section 2. Section 287.137, Florida Statutes, is created  
180 to read:

181 287.137 Antitrust violations; denial or revocation of the  
182 right to transact business with public entities; denial of  
183 economic benefits.—

184 (1) As used in this section:

185 (a) "Affiliate" means:

186 1. A predecessor or successor of a person convicted of or  
187 held liable for an antitrust violation; or

188 2. An entity under the control of any natural person who is  
189 active in the management of the entity and who has been  
190 convicted of or held liable for an antitrust violation. The term  
191 "affiliate" includes those officers, directors, executives,  
192 partners, shareholders, employees, members, and agents who are  
193 active in the management of an affiliate. The ownership by one  
194 person of shares constituting a controlling interest in another  
195 person, or a pooling of equipment or income among persons when  
196 not for fair market value under an arm's length agreement, is a  
197 prima facie case that one person controls another person. A  
198 person who knowingly enters into a joint venture with a person  
199 who has violated an antitrust law during the preceding 36 months  
200 is considered an affiliate.

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201        (b) "Antitrust violation" means any state or federal  
202        antitrust law as determined in a civil or criminal proceeding  
203        which has been brought by the Attorney General, a state  
204        attorney, a similar body or agency of another state, or the  
205        United States Department of Justice.

206        (c) "Conviction or being held liable" or "convicted or held  
207        liable" means a criminal finding of guilt or conviction, with or  
208        without an adjudication of guilt, being held civilly liable, or  
209        having a judgment levied for an antitrust violation, in any  
210        federal or state trial court of record relating to charges  
211        brought by indictment, information, or complaint after July 1,  
212        2021, as a result of a jury verdict, nonjury trial, or entry of  
213        a plea of guilty or nolo contendere or other order with a  
214        finding of liability.

215        (d) "Antitrust violator vendor list" means the list  
216        required to be kept by the department pursuant to paragraph  
217        (3) (b) .

218        (e) "Economic incentives" means state grants, cash grants,  
219        tax exemptions, tax refunds, tax credits, state funds, and other  
220        state incentives under chapter 288 or administered by Enterprise  
221        Florida, Inc.

222        (f) "Person" means any natural person or any entity  
223        organized under the laws of any state or of the United States  
224        who operates as a social media platform, as defined in s.  
225        501.2041, with the legal power to enter into a binding contract

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226 and which bids or applies to bid on contracts let by a public  
227 entity, or which otherwise transacts or applies to transact  
228 business with a public entity. The term "person" includes those  
229 officers, directors, executives, partners, shareholders,  
230 employees, members, and agents who are active in management of  
231 an entity.

232 (g) "Public entity" means the State of Florida and any of  
233 its departments or agencies.

234 (2) (a) A person or affiliate who has been placed on the  
235 antitrust violator vendor list following a conviction or being  
236 held liable for an antitrust violation may not submit a bid,  
237 proposal, or reply for any new contract to provide any goods or  
238 services to a public entity; may not submit a bid, proposal, or  
239 reply for any new contract with a public entity for the  
240 construction or repair of a public building or public work; may  
241 not submit bids, proposals, or replies on any new leases of real  
242 property to a public entity; may not be awarded or perform work  
243 as a contractor, supplier, subcontractor, or consultant under a  
244 new contract with any public entity; and may not transact any  
245 new business with any public entity.

246 (b) A public entity may not accept any bid, proposal, or  
247 reply from, award any new contract to, or transact any new  
248 business with any person or affiliate on the antitrust violator  
249 vendor list unless that person or affiliate has been removed  
250 from the list pursuant to paragraph (3) (e).

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251 (c) This subsection does not apply to contracts that were  
252 awarded or business transactions that began before such person  
253 or entity was placed on the antitrust violator vendor list, and  
254 in no event before July 1, 2021.

255 (3)(a) Starting July 1, 2021, all invitations to bid,  
256 requests for proposals, and invitations to negotiate, as defined  
257 in s. 287.012, and any contract document described by s. 287.058  
258 shall contain a statement informing persons of the provisions of  
259 paragraph (2)(a).

260 (b) The department shall maintain a list of the names and  
261 addresses of those who have been disqualified from the public  
262 contracting and purchasing process under this section, entitled  
263 the "antitrust violator vendor list." The department shall  
264 publish an initial list on January 1, 2022, and shall publish an  
265 updated version of the list quarterly thereafter. The revised  
266 quarterly lists shall be electronically posted. Notwithstanding  
267 this paragraph, a person or affiliate disqualified from the  
268 public contracting and purchasing process pursuant to this  
269 section is disqualified as of the date the final order is  
270 entered.

271 (c)1. Upon receiving reasonable information from any source  
272 that a person has been convicted or held liable, the department  
273 shall investigate the information and determine whether good  
274 cause exists to place that person or an affiliate of that person  
275 on the antitrust violator vendor list. If good cause exists, the

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department shall notify the person or affiliate in writing of its intent to place the name of that person or affiliate on the antitrust violator vendor list, and of the person's or affiliate's right to a hearing, the procedure that must be followed, and the applicable time requirements. If the person or affiliate does not request a hearing, the department shall enter a final order placing the name of the person or affiliate on the antitrust violator vendor list. No person or affiliate may be placed on the antitrust violator vendor list without receiving an individual notice of intent from the department.

2. Within 21 days of receipt of the notice of intent, the person or affiliate may file a petition for a formal hearing pursuant to ss. 120.569 and 120.57(1) to determine whether it is in the public interest for that person or affiliate to be placed on the antitrust violator vendor list. A person or affiliate may not file a petition for an informal hearing under s. 120.57(2). The procedures of chapter 120 shall apply to any formal hearing under this paragraph except within 30 days after the formal hearing or receipt of the hearing transcript, whichever is later, the administrative law judge shall enter a final order, which shall consist of findings of fact, conclusions of law, interpretation of agency rules, and any other information required by law or rule to be contained in the final order. The final order shall direct the department to place or not place the person or affiliate on the antitrust violator vendor list.

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301 The final order of the administrative law judge is final agency  
302 action for purposes of s. 120.68.

303 3. In determining whether it is in the public interest to  
304 place a person or affiliate on the antitrust violator vendor  
305 list under this paragraph, the administrative law judge shall  
306 consider the following factors:

307 a. Whether the person or affiliate committed an antitrust  
308 violation.

309 b. The nature and details of the antitrust violation.

310 c. The degree of culpability of the person or affiliate  
311 proposed to be placed on the antitrust violator vendor list.

312 d. Reinstatement or clemency in any jurisdiction in  
313 relation to the antitrust violation at issue in the proceeding.

314 e. The needs of public entities for additional competition  
315 in the procurement of goods and services in their respective  
316 markets.

317 4. In any proceeding under this paragraph, the department  
318 must prove that it is in the public interest for the person or  
319 affiliate to whom it has given notice under this paragraph to be  
320 placed on the antitrust violator vendor list. Proof of a  
321 conviction of the person or that the person was held liable or  
322 that one is an affiliate of such person constitutes a prima  
323 facie case that it is in the public interest for the person or  
324 affiliate to whom the department has given notice to be put on  
325 the antitrust violator vendor list. Status as an affiliate must

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326 be proven by clear and convincing evidence. If the  
327 administrative law judge determines that the person was not  
328 convicted or that the person was not held liable or is not an  
329 affiliate of such person, that person or affiliate shall not be  
330 placed on the antitrust violator vendor list.

331 5. Any person or affiliate who has been notified by the  
332 department of its intent to place his or her name on the  
333 antitrust violator vendor list may offer evidence on any  
334 relevant issue. An affidavit alone does not constitute competent  
335 substantial evidence that the person has not been convicted or  
336 is not an affiliate of a person so convicted or held liable.  
337 Upon establishment of a prima facie case that it is in the  
338 public interest for the person or affiliate to whom the  
339 department has given notice to be put on the antitrust violator  
340 vendor list, that person or affiliate may prove by a  
341 preponderance of the evidence that it would not be in the public  
342 interest to put him or her on the antitrust violator vendor  
343 list, based upon evidence addressing the factors in subparagraph  
344 3.

345 (d)1. If a person has been charged or accused of any state  
346 or federal antitrust law in a civil or criminal proceeding  
347 brought by the Attorney General, a state attorney, or the United  
348 States Department of Justice initiated after July 1, 2021, the  
349 Attorney General may, by a finding of probable cause that a  
350 person has likely violated the underlying antitrust laws,

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351 temporarily place such person on the antitrust violator vendor  
352 list until such proceeding has concluded.

353 2. If probable cause exists, the Attorney General shall  
354 notify the person in writing of its intent to temporarily place  
355 the name of that person on the antitrust violator vendor list,  
356 and of the person's right to a hearing, the procedure that must  
357 be followed, and the applicable time requirements. If the person  
358 does not request a hearing, the Attorney General shall enter a  
359 final order temporarily placing the name of the person on the  
360 antitrust violator vendor list. No person may be placed on the  
361 antitrust violator vendor list without receiving an individual  
362 notice of intent from the Attorney General.

363 3. Within 21 days of receipt of the notice of intent, the  
364 person may file a petition for a formal hearing pursuant to ss.  
365 120.569 and 120.57(1) to determine whether it is in the public  
366 interest for that person or affiliate to be placed on the  
367 antitrust violator vendor list. A person or affiliate may not  
368 file a petition for an informal hearing under s. 120.57(2). The  
369 procedures of chapter 120 shall apply to any formal hearing  
370 under this paragraph.

371 4. In determining whether it is in the public interest to  
372 place a person on the antitrust violator vendor list under this  
373 paragraph, the administrative law judge shall consider the  
374 following factors:

375 a. The likelihood the person committed the antitrust

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376 violation.

377 b. The nature and details of the antitrust violation.

378 c. The degree of culpability of the person proposed to be  
379 placed on the antitrust violator vendor list.

380 d. The needs of public entities for additional competition  
381 in the procurement of goods and services in their respective  
382 markets.

383 5. This paragraph does not apply to affiliates.

384 (e)1. A person may be removed from the antitrust violator  
385 vendor list subject to such terms and conditions as may be  
386 prescribed by the administrative law judge upon a determination  
387 that removal is in the public interest. In determining whether  
388 removal would be in the public interest, the administrative law  
389 judge must consider any relevant factors, including, but not  
390 limited to, the factors identified in subparagraph (c)3. Upon  
391 proof that a person was found not guilty or not liable, the  
392 antitrust violation case was dismissed, or the court entered a  
393 finding in the person's favor, or the person's conviction or  
394 determination of liability has been reversed on appeal or that  
395 he or she has been pardoned, the administrative law judge shall  
396 determine that removal of the person or an affiliate of that  
397 person from the antitrust violator vendor list is in the public  
398 interest. A person or affiliate on the antitrust violator vendor  
399 list may petition for removal from the list no sooner than 6  
400 months from the date a final order is entered pursuant to this

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401 section, but may petition for removal at any time if the  
402 petition is based upon a reversal of the conviction or liability  
403 on appellate review or pardon. The petition shall be filed with  
404 the department, and the proceeding shall be conducted pursuant  
405 to the procedures and requirements of this subsection.

406 2. If a petition for removal is denied, the person or  
407 affiliate may not petition for another hearing on removal for a  
408 period of 9 months after the date of denial, unless the petition  
409 is based upon a reversal of the conviction on appellate review  
410 or a pardon. The department may petition for removal prior to  
411 the expiration of such period if, in its discretion, it  
412 determines that removal would be in the public interest.

413 (5) The conviction of a person or a person being held  
414 liable for an antitrust violation, or placement on the antitrust  
415 violation vendor list, shall not affect any rights or obligations  
416 under any contract, franchise, or other binding agreement which  
417 predates such conviction or placement on the antitrust violator  
418 vendor list.

419 (6) A person who has been placed on the antitrust violator  
420 vendor list is not a qualified applicant for economic incentives  
421 under chapter 288, and such entity shall not be qualified to  
422 receive such economic incentives.

423 (7) The provisions of this section do not apply to any  
424 activities regulated by the Florida Public Service Commission or  
425 to the purchase of goods or services made by any public entity

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426 from the Department of Corrections, from the nonprofit  
427 corporation organized under chapter 946, or from any accredited  
428 nonprofit workshop certified under ss. 413.032-413.037.

429 (8) This section may only be enforced to the extent not  
430 inconsistent with federal law, and notwithstanding any other  
431 provision of state or local law.

432 Section 3. Section 106.072, Florida Statutes, is created  
433 to read:

434 106.072 Social media deplatforming of political  
435 candidates.—

436 (1) As used in this section, the term:

437 (a) "Candidate" has the same meaning as in s.  
438 106.011(3) (e).

439 (a) "Deplatform" has the same meaning as in s. 501.172.

440 (b) "Social media platform" has the same meaning as in s.  
441 501.172.

442 (2) A social media platform may not knowingly deplatform a  
443 candidate. Upon a finding of a violation of this section by the  
444 Florida Elections Commission, the social media platform may be  
445 fined \$100,000 per day for statewide candidates and \$10,000 per  
446 day for other candidates of unlawful deplatforming.

447 (3) A social media platform that knowingly provides free  
448 advertising for a candidate must report such advertising as an  
449 in-kind contribution to the candidate under state election laws.  
450 Posts, content, material, and comments by candidates that are

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451 shown on the platform in the same or similar way as other user's  
452 posts, content, material, and comments is not considered free  
453 advertising.

454 (4) This section may only be enforced to the extent not  
455 inconsistent with federal law, to the extent authorized under 47  
456 U.S.C. s. 230(e)(3), and notwithstanding any other provision of  
457 state or local law.

458 Section 4. Subsection (2) of section 501.212, Florida  
459 Statutes, is amended to read:

460 501.212 Application.—This part does not apply to:

461 (2) Except as provided in s. 501.2041, a publisher,  
462 broadcaster, printer, or other person engaged in the  
463 dissemination of information or the reproduction of printed or  
464 pictorial matter, insofar as the information or matter has been  
465 disseminated or reproduced on behalf of others without actual  
466 knowledge that it violated this part.

467 Section 5. If any provision of this act or the application  
468 thereof to any person or circumstance is held invalid, the  
469 invalidity shall not affect other provisions or applications of  
470 the act which can be given effect without the invalid provision  
471 or application, and to this end the provisions of this act are  
472 declared severable.

473 Section 6. This act shall take effect July 1, 2021.